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PREPARATORY COMMISSION FOR THE
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STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 3 ON THE PROGRESS OF WORK IN THAT COMMISSION

I. ORGANIZATION OF WORK

1. During the 1992 summer session of the Preparatory Commission, Special Commission 3 held four meetings, i.e. the 164th to the 167th meetings. The Special Commission also held several sessions of informal consultations on the revision of the documents on Labour, Health and Safety Standards.

2. Following the usual practice, the Contact Group of the Group of 77 on Special Commission 3 matters utilized some of the time allocated to meetings of Special Commission 3 for coordination purposes.

II. ISSUES DEALT WITH IN THE SPECIAL COMMISSION

Informal consultations

3. The Special Commission held informal consultations for the purpose of revising documents LOS/PCN/SCN.3/WP.6/Add.8 and LOS/PCN/SCN.3/WP.6/Add.8/Corr.1 (Labour, Health and Safety Standards). Following a preliminary exchange of views and informal consultations during the 1992 spring session of Special Commission 3 in Kingston, Jamaica, document LOS/PCN/SCN.3/1992/CRP.16 was prepared taking into account views expressed during those discussions. That document was then discussed during the informal consultations during this session.

4. The informal consultations were able to achieve a text that was agreeable to all the delegations that participated in the consultations. Once this text receives the endorsement of the Special Commission it will be issued as

document LOS/PCN/SCN.3/WP.6/Add.8/Rev.1. I wish to express my sincere gratitude to all the delegations involved in negotiating this text and to the representatives of the International Labour Organisation (ILO) for their advice and assistance in this matter.

Potential environmental effects of deep seabed mining

5. Two experts from Germany addressed the Special Commission and discussed the current status of research on the environmental impact of deep seabed mining of polymetallic nodules as well as requirements for future environmental impact studies.

6. One of the experts suggested that mining impacts could be divided into two categories: those which were avoidable and those which were not. Expected impacts included those resulting from a sediment cloud or plume created by collector activity which would blanket the seabed and the animals thriving on and in the sediment. He proposed that the disposal of fine particulate material and of all organic wastes pumped up with the nodules should not take place in surface waters; they should be discharged at greater depths to avoid the contamination of the productive surface zone.

7. The expert said that Governments and industries had long recognized the potential environmental hazards arising from exploration activities and that environmental investigations had accompanied early research into deep seabed mining activities, such as those conducted in 1970 by the United States company, Deep Sea Ventures. Germany had initiated intensive environmental studies along with mining tests in the Red Sea. Despite such attention to environmental concerns, he felt that it was difficult for industrial development and environmental precaution to be in tune. He was of the opinion that engineers could design mining equipment but oceanographers were unable to predict the extent to which the marine environment could be harmed since knowledge of the ecology of the deep ocean was limited. He felt that the prediction of mining impacts was rendered more difficult due to the small scale of oceanographic sampling as compared to the huge scale of potential mining activities.

8. The expert suggested that impact predictions could not be deduced from current knowledge and that it was necessary for oceanographers to conduct large-scale investigations. He pointed out that scientists had recently initiated the first large-scale benthic impact observation experiment, involving the creation of a simulated disturbance on the sea floor to determine the reaction of deep sea marine life to mining impacts. He informed the Special Commission that scientists from the United States and the Russian Federation were launching a second large-scale experiment.

9. He said that such experiments did not suffice in the provision of information; only a pilot mining operation would provide the opportunity to evaluate risks. He suggested that a pilot mining operation would mine the seabed on a reduced technical scale for four to six months. He felt that the impacts of the pilot operation would not harm the ocean but the scale of

activities would be sufficient to allow extrapolation of observations elucidating environmental impacts. In his opinion such a pilot project required close cooperation between ocean miners and those interested in protecting the marine environment.

10. The expert also felt that international cooperation was essential to risk assessment since pilot mining operations would require environmental studies before, during and after the mining tests. He pointed out that several research ships would need to operate for approximately two years at a cost of about US$ 40 million. Other risk assessment activities, such as data evaluation, would cost an additional US$ 50 million. There was further need for international cooperation since such funding could not be provided by a single country and the knowledge gained from such tests could be shared among all interested parties. He suggested that cooperation could be achieved on two tiers: between oceanographers and miners and among different countries. It was critical, he said, for politicians, industrialists, engineers and oceanographers to arrive at a common understanding.

11. He announced the convening of a symposium on deep sea ecology and deep sea mining in Hamburg in May 1994 to address such issues as environmental problems associated with deep sea mining; coordination of pilot operations between miners and oceanographers; long-term monitoring of mining impacts; and the further promotion of international and interdisciplinary cooperation in mining-related oceanography. He felt that a system of communication between groups interested in deep sea mining should be established. He pointed out that such a system already existed in Germany and served to promote a common understanding of a broad range of problems.

12. The second expert said various risks arose from technical operations. From practical experience, it was clear that the environmental impact of deep sea mining could be controlled and limited, although the extent to which control could be exercised was not clear. He pointed out that polymetallic nodules on the abyssal plain were fed upon by deep sea marine life and that the density of fauna population in fields with nodules was far greater than in fields without nodules, demonstrating that biological life and nodule growth were interrelated. In his opinion, areas of potential impact included surface discharges and deep ocean disposal sites and that offshore loading could also pose a threat to the marine ecosystem. The expert informed the Special Commission that surface disposal plumes had been studied.

13. At present technical research is focused on more environmentally oriented technology, especially the nodule collector, with a view to testing larger equipment in the coming years. Although exploration activities would have a limited and tightly controllable impact on the seabed and ocean environment, he felt that the impact of modern research vessels on the sea surface could be minimized even further through waste processing technology which yielded an almost zero discharge. It would be ideal, he said for commercial mining, which might be in operation in 20-30 years' time, to be accompanied by environmentally oriented technology and an environmentally oriented mining code allowing for a synthesis of environmental control and mining. It was important that commercial mining should aim to synthesize ecology and economy.

14. He went on to describe a mining scheme involving disposal capacities which would limit environmental impacts. For example a self-propelled collector should comply with the requirements of efficient mining and environmental protection. He suggested that the sediment plume, which could not be prevented, could be reduced by being recycled through the use of a hydraulic device. He pointed out that an experimental self-propelled, auto-controllable nodule collector had been designed for future use.

15. The expert suggested that the sediment plume produced by a self-propelled collector could also be controlled through monitoring and that climatic models of the deep sea ocean would make such monitoring possible. He pointed out that metal separation, smelting and other steps were more or less well established and that their economic and environmental impacts could easily be determined. He stressed that environmental protection must be safeguarded everywhere. Even though a long-term monitoring project would prove to be very expensive it was imperative that it be established and the expenses borne by contractors and the Enterprise. Furthermore, deep ocean floor stations would be required in order to control efficiently the mining of the sea floor, while in addition large areas would require constant monitoring both at the sea surface as well as on the ocean floor.

16. The expert expressed the view that risk assessment would require a balanced system of rules and regulations involving a proper assessment of all interests including those of the contractor as well as those of the Authority. Standards would be required in order for arbitration to be carried out in the case of conflicts. It was also necessary that the rules, regulations and standards should be as flexible as possible and that the mining code should have enough flexibility to permit rather than prevent commercial operations.

17. Following the presentations of the two experts, a number of delegations asked questions and sought clarification on the issues raised. A delegation inquired whether processing of polymetallic nodules at sea was feasible and, if so, whether significant discharge would result from it. The experts responded that present knowledge indicated that there would be no processing conducted at sea. Another question raised was in regard to the impact on the life cycles of higher forms of fish found near the surface of the ocean. The experts pointed out that little research had been conducted on that topic and that research had focused primarily on marine life at the base of the food chain as well as that found on the deep ocean floor.

18. Another question concerned the proposed monitoring stations to be established on the seabed. It was pointed out by the experts that the monitoring stations would observe such physical parameters such as water temperature, flow, chemical indicators and, in future, in situ elements such as heavy metals.

19. Another question raised was whether fauna density was related to surface conditions or to the existence of nodules. In response the experts said that biological activity on the ocean floor did influence nodules but no link could

be established from surface activity. The last question raised was whether manganese processing would be part of an initial operation. The experts replied that it depended on whether it was a three or four mineral operation: a three mineral operation would not include manganese. However, they felt that most operations would involve four minerals (including manganese) since this would be more economically and environmentally sound.

Draft final report of Special Commission 3

Introduction by the Chairman

20. The Special Commission commenced a general exchange of views on the draft final report of Special Commission 3. In presenting the draft report, I endeavoured to explain the status of this document. The report is not intended to constitute the final report of the Special Commission to the plenary. At this point in time it is intended to be a reflection of the progress which has been made in the Special Commission.

21. As stated in the introduction, the object of the report is to provide an overview of the work of the Special Commission in discharging its mandate and to assist delegates in focusing their attention on areas where further work might be desirable.

22. As regards the substance of the report the introductory pages were intended to reflect the results of the discussion in the Special Commission. For more detailed information on the views of delegations and of the discussions, delegations were referred to the relevant parts of the various reports of the Chairmen for each session which were published after consultation with delegations. It is also important to note that the report would still require the attachment in the annex of working papers and conference room papers reflecting the views of various States and interest groups.

23. As regards paragraph 68 of the draft report in which there was reference to a general perception that the Special Commission had only limited time available to discharge its mandate in the most effective manner, this was meant in the specific context of this Special Commission and the rate of work. It took ten years to complete a first revision of each document comprising the mining code with the exception of the documents dealing with production authorizations and accounting principles and procedure. No revisions of the two documents were prepared since it was felt that a consensus which could provide a basis for an integrated text had not emerged in either case.

24. According to the original plan of work of the Special Commission it would be necessary to undertake a second revision of each document. During the same period of 10 years there had been an average of 5.1 States ratifying or acceding to the Convention each year so that the Convention was 83 per cent of the way towards entry into force whereas Special Commission 3 was, in a

quantitative sense, less than half way towards its goal in terms of achieving a draft mining code. These were objective realities which had to be addressed and the draft report was a way to assist delegates in this task.

Views expressed by delegations

25. It was proposed by some delegations to suspend the discussion on the draft mining code at the present time, i.e. after the completion of its first reading and despite the fact that the revised versions of the draft had not yet been discussed. It was felt that during the discussion on the various parts of the mining code it was possible to identify issues and to solve some of them. However it was suggested that it was impossible to reach a final agreement on any of the drafts contained in documents LOS/PCN/SCN.3/WP.6, its addenda 1-8 and the first revisions as long as there was no agreement on the areas of concern in Part XI. Therefore it was felt that it would be appropriate to suspend the discussions in Special Commission 3 and to transmit the draft mining code without any commitment of member States to its present wording to the plenary of the Preparatory Commission bearing in mind the possibility of reverting to this matter at an appropriate time when an agreement had been reached on the areas of concern.

26. A suggestion was also made to annex to the report under discussion not only the draft mining code as it is currently drafted, but also those documents containing proposals for amendments submitted by various States and interest groups.

27. It was felt by other delegations that the term "draft final report" may appear misleading although the report was viewed as the single most comprehensive appraisal to date of the progress of work undertaken in Special Commission 3 since its inception. Therefore it was suggested that the conclusions to which it might lead would form the basis for any subsequent decision on the future of work in the Special Commission. It was pointed out that in that respect, it is fair to say that Special Commission 3 has yet to discharge its mandate under resolution I of the Third United Nations Conference on the Law of the Sea, namely, to draft a comprehensive set of rules and regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area. In the opinion of those delegations, the document currently before the Special Commission would appear rather to be a report on the progress made to date in the Special Commission in considering the various documents comprising the draft mining code but should not be considered to be a final report and should not be construed as such.

28. Concern was expressed over what appeared to be significant editorial omissions in the report especially in regard to the conclusions contained in paragraphs 67 and 68 which were not perceived as the result of previous discussion within the Special Commission. It was pointed out that it was not clear from the conclusions to what extent Special Commission 3 had discharged its mandate nor under what circumstances it could be expected to finalize its work.

29. It was suggested that to claim that no final agreement has been reached on any of the documents comprising the draft mining code would seem an oversimplification at best. It was argued that provisional agreement has been reached on various provisions of the mining code, whereas others remained to be further discussed at the appropriate time. It was also pointed out that some of the working papers discussed in the Special Commission had been reissued in revised form, whereas others had, for the time being, remained unrevised. The point was also made that some previous revisions were undertaken by the Chairman on his own responsibility, while more recent revisions were prepared by the Chairman in direct consultation with the members of the Special Commission and might thus be seen as reflecting a position as close to consensus as it had been possible to achieve. It was felt that that state of affairs did not seem properly reflected in the report.

30. The view was expressed that document LOS/PCN/SCN.3/1992/CRP.17 simply stated that "while progress has been made in identifying and resolving some issues, the Special Commission has not yet reached final agreement on any of the working papers". Therefore it was argued that what was implied in that statement was that all documents comprising the draft mining code were of equal value as working papers the final revision of which had been rendered impracticable, notwithstanding the tentative agreement reached on various issues in the course of deliberations.

31. It was further pointed out that the report went on to state that "there is a general perception that the Special Commission has only limited time available to discharge its mandate in the most effective manner possible". However it was felt by some delegations that this conclusion begged the question of whether Special Commission 3 had or was likely ever to fulfil the mandate entrusted to it. It was the view of those delegations that though it might be claimed by some that a full second reading of the entire draft mining code could extend the work of Special Commission 3 beyond what was reasonable, the report did not clearly reflect the current stage of negotiations nor whether circumstances might warrant further discussion of outstanding issues.

32. As regards the final status of the documents considered in Special Commission 3 in the course of its deliberations the view was expressed that the Special Commission should not forego the option of revisiting previous sections of the draft mining code at some future point, provided that the programme of work of Special Commission 3 at forthcoming sessions of the Preparatory Commission could be adjusted accordingly. It was also the view of those delegations that in the event consideration of the various sections of the draft mining code could not be finalized, the proposals for amendment put forward by various States and interest groups should remain as submitted.

33. It was stated by some delegations that, barring any future development, they would be obliged to reserve their position on the entire draft mining code and to request that all the proposals submitted to date on their behalf be taken into account in any subsequent revision of the mining code and should be incorporated in the revised version of CRP.17.

34. It was also the view of those delegations that, wherever practical, the various contributions made by experts in the course of seminars conducted under the auspices of the Special Commission on matters such as financial terms of contracts and preservation of the marine environment be duly reflected in the report.

35. A number of delegations reserved their right to submit concrete proposals for amending the draft final report at the appropriate time. It was felt that a comprehensive appraisal of the work of Special Commission 3, even if informative and non-binding in nature, would have to serve as a guide to future participants and attempt, to the extent possible, to reflect the history of discussion in the Special Commission and the prospects, as perceived at the time, for the successful conclusion of its work.

III. FUTURE PROGRAMME OF WORK

36. Delegates are requested to submit written draft amendments or suggestions to the Secretariat concerning the report of the Special Commission not later than 15 October 1992 in order to allow adequate preparation for the consideration of the draft report during the 1993 spring session of the Preparatory Commission.